

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TERRI CROW-WEST
Claimant

VS.

CITY OF WICHITA
Respondent
Self-Insured

)
)
)
)
)
)
)

Docket No. 1,007,906

ORDER

Claimant requests review of the January 14, 2003, preliminary hearing Order entered by Administrative Law Judge John D. Clark.

ISSUES

While at work the claimant bent over to retrieve copies from a copy machine. As she stood back up she fainted and fell breaking her ankle. The Administrative Law Judge (ALJ) denied benefits holding the injury was caused by a personal condition and did not arise out of her employment.

Claimant argues there is a direct connection between her work activities and her becoming lightheaded and fainting. She argues she was working harder than usual, had not taken a lunch break and leaned over too fast at the copy machine. Consequently, claimant argues her fainting episode was caused by and directly related to her work activities.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

Claimant was employed as a community service records clerk for the respondent. It is undisputed that on November 6, 2002, she fainted and fell breaking her ankle. She described the accident in the following manner:

Q. Let's talk about your right ankle injury of November 6th. Can you explain for the Judge how you were hurt?

A. I had copied - - made copies of some notices I was to send out, and I had walked to the printer to retrieve the copies, when I bent over to pick the copies up out of the printer, I felt weak and dizzy, and the next thing I remember, I was on the floor.¹

When asked what caused her to become lightheaded, the claimant guessed it was because the support staff was shorthanded and she had skipped lunch to help them.

The Emergency Physician Record from the Wesley Medical Center, dated November 7, 2002, contained a history that claimant “stood up & walked to copy machine, became dizzy & passed out.”

Claimant must establish personal injury by accident arising out of and in the course of employment.² For a claim to arise “out of” employment, its cause or origin must develop out of the nature, conditions, obligations and incidents of employment.³

The Board finds a nexus between claimant’s feeling weak or dizzy and her fainting spell. Rather than being an unexplained fall, this would be a personal condition of the employee.⁴ Where an employment injury is clearly attributable to a personal condition of the employee, and no other factors intervene or operate to cause or contribute to the injury, no award is granted. But where an injury results from the concurrence of some preexisting personal condition and some hazard of employment, compensation is generally allowed.⁵

In *Bennett*, the claimant’s personal epileptic condition caused him to black out. But it was the fact that he was driving the employer’s vehicle that subjected him to an additional risk. Professor Larson agrees that the effects of a fall can become compensable if conditions of employment place the employee in a position to increase the effects of the fall, such as in a moving vehicle.⁶

¹ P.H. Trans. at 6-7.

² K.S.A. 44-501(a).

³ *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995); *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 197, 689 P.2d 837 (1984).

⁴ See 1 *Larson’s Workers’ Compensation Law* § 9.01[2].

⁵ *Bennett v. Wichita Fence Co.*, 16 Kan. App. 2d 458, 824 P.2d 1001, rev. denied 250 Kan. 804 (1992).

⁶ 1 *Larson’s Workers’ Compensation Law* § 9.01[1].

Here, we have a personal condition of the claimant with no additional risk from her employment. Claimant was retrieving copies from the copy machine when she fainted and fell to the floor breaking her ankle. The Board finds the fall experienced by claimant on November 6, 2002, was caused by the employee's personal condition. Therefore, the Board finds that injury did not arise out of claimant's employment with respondent and the award denying claimant benefits in this matter should be affirmed.

AWARD

WHEREFORE, Administrative Law Judge John D. Clark's Order dated January 14, 2003, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of February 2003.

BOARD MEMBER

c: Phillip B. Slape, Attorney for Claimant
Edward D. Heath, Attorney for Respondent
John D. Clark, Administrative Law Judge
Director, Division of Workers Compensation